IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 16.07.2007

Coram

The Honourable Mr.Justice M.CHOCKALINGAM

C.R.P.NPD.No.252 of 2004
and
C.M.P.Nos.2193 of 2004
and
C.M.P.No. 1958 of 2007

Bosco ...Petitioner/Plaintiff

-vs-

1. Alexander
2. A.Anthony Hope ..1&2 Respondent/2&3 defendant
3. Vincent
4. Maria Joosai Raj ..3&4 Respondent/LRS of 4th defendant
5. Padaleeswarar Educational Trust ..5th Respondent/8th Respondent
   rep. By its President Muthu
6. Thenavan ..6th Respondent/9th Respondent
7. Sivakumar
8. Selvakumar
9. Senthilkumar
10. Devaraj ..10th Respondents/Respondent 13th

Civil Revision Petition filed u/s.115 CPC against the judgment and decree dated 13.11.2003 in I.A.No. 249 of 2000 in O.S.No. 227 of 1975 on the file of Principal Sub Court, Cuddalore.

For Petitioner : Mr.Kannan for Ms.Usha Raman
For Respondents : Mr.P.Mani for R5
(Caveator)

ORDER

The order of the learned Subordinate Judge, Cuddalore made in I.A.No. 249 of 2000 denying to grant final decree is challenged by the revision petitioners.

2. It was a suit for partition. On 18.2.1976, an ex parte preliminary decree was passed. The plaintiff filed I.A.No. 249 of 2000 for passing a final decree. The application was dismissed on the ground of memo of compromise entered between the parties in OS.No. 32 of 1985. Hence, no final decree can be passed. Under the said circumstances, the said order is sought to be challenged in this Civil Revision Petition.

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3. The only contention put forth by the learned counsel for the respondents is that if the revision petitioner is really aggrieved by the dismissal of the application for final decree, he should have preferred a regular appeal before the appropriate forum and invoking the provisions of Section 115 Code of Civil Procedure before this Court by way of this petition does not arise.

4. The said contention of the respondents has got to be accepted as one in accordance with law. Under the circumstances, the Civil Revision Petition is dismissed with liberty to the petitioner to file an appeal before the regular forum. In so far as the delay in preferring the appeal is concerned, the lower court is directed to consider the period of pendency of the Civil Revision Petition before this Court, in the light of Section 14 of the Limitation Act. No costs. Consequently, connected CMPs are closed.

bg

Sd/-
Asst.Registrar

/true copy/

Sub Asst.Registrar

To

The Principal Sub Court, Cuddalore.

+1 cc to Mr.S.K.Rakhunathan, Advocate Sr.No.43431.

+1 cc to Mr.Usharaman, Advocate Sr.No.43342.

NSM(CO)
dcp/26.7.07

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